

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 480

CASE NO. 85-12

January 13, 1986

(Map Amendment @ 200 block of Michigan Avenue, N.E.)

Pursuant to notice a public hearing of the District of Columbia Zoning Commission was held on November 14, 1985. At that hearing session the Zoning Commission considered an application from Trinity College to amend the Zoning Map of the District of Columbia, pursuant to Section 9101 of the Zoning Regulations of the District of Columbia. The hearing was conducted in accordance with the provisions of Chapter 6 of the Rules of Practice and Procedure before the Zoning Commission.

FINDINGS OF FACT

1. The application, which was filed August 8, 1985, requests a change of zoning from the R-5-A District to the C-1 District for a portion of Lot 802 in Square 3499 in approximately the 200 block of Michigan Avenue, N.E.
2. The subject property contains approximately 1.02 acres of land and is located with approximately 216 feet of frontage on the north side of Michigan Avenue between Irving and Franklin Street, N.E. The subject site is a small portion of a larger development,
3. The subject site is vacant and predominantly wooded. The site slopes steeply with its highest elevation along the western portion of the site and its lowest elevation along the eastern portion of the site at Michigan Avenue.
4. The existing R-5-A District permits matter-of-right single-family detached and semi-detached dwellings, and with the approval of the Board of Zoning Adjustment low density development of general residential uses including rowhouses, flats, and apartments to a maximum floor area ratio (FAR) of 0.9, a maximum lot occupancy of forty percent, and a maximum height of three-stories/forty feet.

5. The proposed C-1 District permits matter-of-right low density development including convenience retail and personal service establishments for the day-to-day needs of a small tributary area to a maximum height of forty feet/three stories,, a maximum floor area ratio (FAR) of 1.0 and a maximum lot occupancy of sixty percent.
6. The site is located in an extensive area of R-5-A zoning containing institutional and residential uses. The site is abutted to the north by a fringe parking lot owned by the United States government and operated by the District of Columbia government and is unzoned. Immediately east and south of the site across Michigan Avenue is Trinity College, owner of the site in question in the R-5-A District. Abutting the site to the west is the larger heavily wooded and undeveloped portion of lot 802 in the R-5-A District.
7. Further north and east of the site are institutional uses such as the Shrine of the Immaculate Conception and Catholic University. Residential uses are located further south and west of the site including rowhouses and garden and medium-rise apartments in the R-3, R-4 and R-5-A Districts. The U.S. Soldiers Rome, the Veterans Administration Hospital, the Washington Hospital Center and Children's Hospital are institutional uses located further north and west of the site.
8. The Generalized Land-Use Element Map of the Comprehensive Plan indicates the area in the vicinity of the site in question as moderate density residential and mixed use medium density residential and institutional uses.
9. The subject site of 1.02 acres is a portion of a larger privately owned 24 acre tract of land all zoned R-5-A and bounded by North Capitol Street, Irving Street, and Michigan Avenue, N.E.
10. The Board of Zoning Adjustment (BZA) approved a site plan for residential development on the entire 24 acre tract in 1978 in BZA Case No. 12805. The total development plan, known as Park Place, was to contain 541 units to be constructed in six phases. Only Phases 1 and 2 on 9.15 acres of the total site have been constructed at the corner of North Capitol Street and Michigan Avenue. The remaining four phases were never started and consequently the BZA approval expired.
11. The applicant, Trinity College and the contract purchaser/developer, Horning Associates are proposing an alternate plan for development of the remaining undeveloped 15 acres of the 24 acre tract as

355 residential garden apartment units under the existing R-5-A District and a neighborhood commercial retail and service facility on 1.02 acres under the proposed C-1 District which is the subject of this application. Site plan approval was given by the BZA in Application No. 14360 on October 16, 1985 for a residential development on 7.38 acres of the 15 acres located immediately to the west and the north of the subject site. This total 8.4 acre portion of the original 24 acre tract was to contain Phases 5 and 6 of the Park Place development as initially contemplated in 1978.

12. The remaining undeveloped 6.51 acre portion of the original 24 acre tract not built upon and not under consideration by this Commission, is located at the northern periphery of the original site along North Capitol and Irving Streets. This portion of the site was planned for Phases 3 and 4 of the Park Place development. It is still owned by Trinity College and is likely to be developed by Horning Associates with an additional 163 residential units.
13. The applicant proposes to construct a neighborhood convenience center consisting of approximately 13,000 square feet of gross floor area with an FAR of 0.29, a height of twenty-four feet, a lot occupancy of twenty-nine percent and approximately fifty-nine parking spaces including space for handicapped and compact cars.
14. Donald Bruner, architect, of Navy, Marshall and Garden described the proposed development and stated that the commercial site was purposely located at the lowest elevation of the property under contract to Horning Associates. The steep changes in grade create a natural screening between the proposed commercial site and the proposed residential development adjacent to it,
15. The architectural treatment of the proposed commercial facility will be compatible with the adjacent residential development. The landscaping of the site will preserve natural vegetation. A park-like frontage will be retained along Michigan Avenue. Ingress and egress to the commercial site will be through a single entrance and exit along Michigan Avenue within the commercial site.
16. Horning Associates developed a similar commercial facility at "The Heights". The Heights is located approximately 7/8 of a mile from the proposed site at the intersection of Hawaii Avenue and Taylor Streets,

N.E. To enable the construction of the Heights this Commission approved the rezoning of 1.8 acres of heavily wooded land from R-5-A to C-1 for the Heights neighborhood shopping facility (Zoning Commission Case No. 78-18). The commercial cluster at The Heights is similar to the present application because it was also planned to "cater to the daily needs of the residents living at the project as well as other nearby residents, students and employees of nearby business establishments." The Heights' commercial development is similar to the proposed site development because it is buffered from nearby residential units. The commercial component of The Heights and the proposed site development are both located at the lowest elevation of land developed with a residential and commercial project.

17. Jerome Lindsey, planning consultant of Jerome Lindsey Associates, testified that the proposed commercial center will serve the day-to-day needs of existing and future neighborhood residents. The commercial center will provide convenience items from residents in the area as well as students and employees of the area colleges, hospitals and other institutions. There are approximately 9,000 persons in the vicinity of the site. Mr. Lindsey testified that the area lacks convenient shopping, and that the nearest commercial areas are located along Georgia Avenue to the west and 12th Street, N.E. to the east. Both of these locations are too far to provide convenience goods and services for residents and employees in the vicinity of the proposed site,
18. Mr. Lindsey testified that the C-1 district is the most appropriate zoning category for the proposed neighborhood facility on the site because it is the most restrictive commercial zone.
19. The planning expert testified that the commercial center is not inconsistent with the Comprehensive Plan of the District of Columbia because it furthers the goals of the Elements of the Comprehensive Plan. Section 102 of the Plan states that the Elements should be studied and executed in concert with each other and should be interpreted broadly. The proposal is consistent with the Land Use Element goal to ensure that all neighborhoods have adequate access to commercial services within the District and sufficient housing opportunities to accommodate a range of needs. Mr. Lindsey testified that the proposed development meets the economic development, housing, environmental protection, transportation and urban design Elements of the Comprehensive Plan by generating revenue for the City, providing residential communities with access to

services and facilities to meet their needs, preserving natural site features and providing off-street loading and parking. The neighborhood commercial facility will be sensitive to, and compatible with, the low scale character of surrounding structures.

20. The planning expert stated that the Generalized Land Use Map of the Comprehensive Plan must be read as a policy guide for development while permitting needed flexibility. The legislative history of the Plan states that the soft-edged character of the Map is intended to provide policy guidance while affording needed flexibility.
21. The planning expert further stated that the Generalized Land Use Map of the Comprehensive Plan designates the site as "moderate density residential use." In these areas, rowhouses and garden apartments with density ranges of 16 to 48 units per acre are the predominant land uses. The key is "predominant use", The legislative history of the Plan indicates that a predominant use is any use covering at least fifty percent of an entire block. In this case, moderate density residential use is the predominant land use because the commercial site development consists of less than twelve percent of the residential and commercial project to be developed by Horning Associates and constitutes less than five percent of the development in the subject square.
22. The applicant stated through the planning expert that:
 - a. Rezoning of the site is consistent with the purposes of the Zoning Act because it creates conditions that are favorable to the health, safety, general welfare and prosperity of the public and encourages stability by providing facilities that accommodate the day-to-day needs of residents and employees in the vicinity of the site,
 - b. The proposed neighborhood convenience center is consistent with sound planning policy because it will provide needed services for the residential and institutional populations in the vicinity of the site. As a result, the rezoning will benefit the entire neighborhood and will further the general welfare of the District of Columbia.
 - c. The development on the site will further the policies of Ward 4 planning to develop vacant areas and to encourage mixed-use projects that contain a mix of residential and neighborhood-serving retail space within commercial areas.

The Ward 4 Notebook indicates that the lack of retail shopping is the leading source of dissatisfaction among Ward 4 residents. The development of convenient retail shopping on the proposed site will address the lack of facilities in the area.

- d. Rezoning the site from R-5-A to C-1 would not constitute spot zoning because the rezoning is consistent with sound planning policy and would enhance the general welfare by providing needed commercial services for the neighborhood. Rezoning of the site would not single out a parcel for the sole benefit of Horning Associates and would not result in action which is inconsistent with the District of Columbia Comprehensive Plan because it would benefit the residential and institutional population by providing convenient shopping that is not available in the vicinity of the site.
23. Mr. Frank J. Letkiewicz, Jr., traffic expert for the applicant, testified that there was sufficient capacity on Michigan Avenue and adjacent streets to handle the trips going in and out of the proposed commercial development. The traffic consultant testified that all of the levels of service in the area of the site are satisfactory. The most heavily traveled intersection in the vicinity of the site, Michigan Avenue and North Capitol Street operates at an overall C level of service during the peak morning hours and a D level of service during the evening peak hours. Mr. Letkiewicz testified that the proposed ingress and egress to the proposed commercial center is safe. He further testified that the traffic that will be generated by the site development will have no measurable impact on the existing levels of service at the critical approaches to the major intersections in the vicinity of the site. He testified that the proposed development would not create an adverse traffic impact on the adjacent street system or on the surrounding neighborhood.
24. Mr. Letkiewicz testified that the number and types of parking spaces proposed for the site would meet the requirements of the Zoning Regulations. He also explained that there will be adequate loading provided on the site.
35. Mr. Joseph F. Horning, Jr., general partner of Horning Associates summarized the benefits of the rezoning for the District of Columbia and indicated that the neighborhood convenience center will create approximately fifty permanent jobs once it is completed. Up to sixty percent of the total jobs created are anticipated to be held by District of Columbia residents. Based on a

forty year life of the commercial site and the residential development adjacent to it, the cumulative real estate taxes are estimated to be in excess of eleven million dollars.

26. Horning Associates voluntarily entered into a First Source Agreement with the District of Columbia Department of Employment Services (DOES). The Agreement facilitates the employment of District of Columbia residents in the Horning commercial development. Pursuant to the Agreement, Horning will notify DOES of job opportunities at the site and DOES will provide names of Qualified District of Columbia residents who are seeking employment. Horning reserves the right to reject any and all job applicants at its sole business discretion.
27. Horning Associates submitted a Declaration of Covenants entered into with Trinity College which limits the uses on the site. The Covenant prohibits the following uses: bookstores whose principal gross sales derive from the sale of pornographic literature and/or pornographic merchandise, gas stations, bowling alleys or pool and/or billiard parlors, dance halls, massage parlors and taverns, bars or saloons, except those whose principal gross sales derive from the sale of food. The Covenant also prohibits the development of office uses on the site in excess of fifty percent of the floor area ratio permitted in the C-1 district. The Covenant also prohibits other uses permitted as a matter-of-right in the C-1 district.
28. The Commission permitted Horning Associates to submit a revised Covenant that would limit the development on the site below the C-1 district requirements for height, density and lot occupancy. Horning submitted a revised Covenant to the Commission on November 21, 1985.
29. The revised Covenant limits the height of development on the site to thirty feet. The maximum FAR is 0.5 or 22,000 square feet of space. The proposed project will not contain more than two stories. The lot occupancy will be limited to forty percent of the site.
30. The revised Covenant deleted references to the termination of the Covenant in the event that Trinity College no longer operates as an educational institution in substantially the same manner as the date of the Covenant.
31. The District of Columbia Office of Planning (OP) by report dated November 4, 1985 and by testimony at the hearing recommended approval of the application. The

OP believes that the proposed neighborhood shopping facility is consistent with the District of Columbia Comprehensive Plan. The area where the subject site is located, is designated for medium density housing, namely townhouses and garden type apartments on the Generalized Land Use Map of the Comprehensive Plan of the District of Columbia. The site is located between Georgia Avenue, N.W. and the 13th Street, N.E. corridors where commercial development is encouraged. However, the distance of these commercial corridors from the site exceeds a convenient walking distance.

32. The OP stated the site is located in the immediate vicinity of institutional uses (Trinity College, Catholic University, U.S. Soldiers Home and the National Shrine) and low and medium density residential areas zoned R-3 and R-5-A. The site itself is part of a large 24 acre site, the balance of which is either already developed (Park Place) or is being contemplated for residential development by the contract purchaser/developer Horning Associates. The applicant's proposals would contribute over a period of time, a total of additional 352 new residential units to the area. In OP's view, a small commercial facility at this location would improve the residential quality of the area by making available certain convenience commercial services within a walking distance.
33. The OP believes that while the proposal requests C-1 zoning and the applicant is willing voluntarily to restrict development by covenant to a level less than the maximum permitted, this commitment would stabilize further the residential character of the area.
34. The OP report stated that the Generalized Land Use Map does not portray all existing or proposed localized neighborhood services. The report quoted from a relevant policy from the Housing Element of the Comprehensive Plan which states, "Housing in the District must be viewed as a key part of the total urban living system that includes access to transportation and shopping, availability of suitable employment, and nearness to schools, libraries, playgrounds and other public amenities."
35. The Department of Public Works (DPW), by memorandum dated November 4, 1985, stated that the proposed parking supply is more than adequate to meet the demand generated by the project. The DPW report stated that the proposed access and circulation system is adequate and separates residential access from the commercial activity. DPW did not anticipate any problems with the water supply or sewer system.

36. Advisory Neighborhood Commission 4D testified at the hearing that the proposed development was discussed at the ANC's meeting on September 26, 1985. The Chairperson of ANC-4D, stated that there was no opposition to the project. At the request of the Commission, the ANC provided a Letter, dated November 15, 1985, stating its position. The ANC did not express its issues and concerns in writing on the application. Consequently, the Zoning Commission is not required to give "great weight" to the position of the ANC,
37. A resident of Park Place condominium, Mr. Steven Migdal, was admitted as a party in opposition. The Commission admitted him as a party only to discuss the proposed development on the commercial site and not comment on the proposed residential uses on the adjacent land. Mr. Migdal stated that the proposed commercial facility was not needed in the area. He testified that the proposal did not promote the health and safety of the neighborhood and did not further the general welfare of the District of Columbia. He felt the proposed facility would increase traffic, create a noise and refuse problem, disturb the peace and tranquility of the neighborhood, create a hangout, adversely effect property values and constitutes spot zoning. Mr. Migdal testified that there were sufficient commercial facilities in the area of the site.
38. Trinity College and Catholic University submitted letters of record, dated September 9, 1985 and September 5, 1985, respectively, in support of the application.
39. There were no persons in opposition to the application at the public hearing or of record.
40. The Commission finds that rezoning the subject site to C-1 is appropriate to the character and scale of the neighborhood and would promote and support the orderly development of the area.
41. The Commission finds that there are inadequate commercial facilities in the area of the site; that the rezoning of the site does not constitute spot zoning; that it is appropriate to fill an existing need of the community; and that the proposed facility would promote the health, safety and general welfare of the community*
42. The Commission finds that upon balancing all of the related elements of the Comprehensive Plan, rezoning the site is not inconsistent with the District of Columbia Comprehensive Plan.

43. The Commission does take note of the applicant's Declaration of Covenants to restrict the use and development controls of the site to a level less than the maximum allowed under the C-1 District..
44. The decision of the Zoning Commission in this application was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self Government and Governmental Reorganization Act. The NCPC, by report dated January 9, 1986, found that the decision to approve C-1 zoning would not adversely affect the Federal Establishment or other Federal.. interests in the National Capital nor be inconsistent with the Comprehensive Plan for the National Capital.

CONCLUSIONS OF LAW

1. Rezoning to C-1 as set forth herein is in accordance with the Zoning Act (Act of June 20, 1938, 52 Stat. 797) by furthering the general public welfare and serving to stabilize and improve the area.
2. Rezoning to C-1 will promote orderly development in conformity with the entirety of the District of Columbia Zone Plan as stated in the Zoning Regulations and Map of the District of Columbia.
3. Rezoning to C-1 will not have an adverse impact on the surrounding neighborhood,
4. Rezoning to C-1 would not be inconsistent with the Comprehensive Plan of the District of Columbia.

DECISION

In consideration of the findings of fact and conclusions of law herein, the Zoning Commission of the District of Columbia hereby orders APPROVAL of the following:


Change from R-5-A to C-1 that portion of Lot 802 in Square 3499 in approximately the 200 block of Michigan Avenue, N.E. as shown on the plat marked as Exhibit No. 18 of the record.


Vote of the Commission at the public meeting held on December 9, 1985; 4-0 (Lindsley Williams, John G. Parsons, George M. White, and Maybelle T. Bennett, to approve C-1 - Patricia N. Mathews, not present not voting).

This order was adopted by the Zoning Commission at its public meeting held on January 13, 1986, by a vote of 4-0 (Lindsley Williams, George M. White, John G. Parsons and

Maybelle T. Bennett to adopt as amended - Patricia N. Mathews, not voting not having participated in the case.

In accordance with Section 4.5 of the Rules of Practice and Procedure before the Zoning Commission of the District of Columbia, this order is final and effective upon publication in the D.C. Register, sepcifically on 31 JAN 1986.


MAYBELLE T. BENNETT
Chairperson
Zoning Commission


CECIL B. TUCKER
Acting Executive Director
Zoning Secretariat

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